

SURREBUTTAL TESTIMONY

of

ERIC LOUNSBERRY

Supervisor

Engineering Department

Energy Division

Illinois Commerce Commission

Atmos Energy Corporation

Reconciliation of Revenues Collected  
Under Gas Adjustment Charges  
with Actual Cost Prudently Incurred

Docket No. 05-0738

March 26, 2010

1 Q. Please state your name and business address.

2 A. My name is Eric Lounsberry and my business address is Illinois Commerce  
3 Commission ("Commission"), 527 East Capitol Avenue, Springfield, Illinois  
4 62701.

5 Q. By whom are you employed and in what capacity?

6 A. I am employed by the Commission as the Supervisor of the Gas Section of the  
7 Engineering Department of the Energy Division. I have worked for the  
8 Commission since 1989.

9 Q. Please state your educational background.

10 A. I received a Bachelor of Science degree in Civil Engineering from the University  
11 of Illinois and a Master of Business Administration degree from Sangamon State  
12 University (now known as University of Illinois at Springfield).

13 Q. What are your primary responsibilities and duties as the Gas Section Supervisor  
14 of the Energy Division's Engineering Department?

15 A. I assign my employees or myself to cases, provide training, and review work  
16 products over the various areas of responsibility covered by the Gas Section. In  
17 particular, the responsibilities and duties of Gas Section employees include  
18 performing studies and analyses dealing with day-to-day and long term,  
19 operations and planning for the gas utilities serving Illinois. For example, Gas  
20 Section employees review purchased gas adjustment clause reconciliations, rate

21 base additions, levels of natural gas used for working capital, and utility  
22 applications for Certificates of Public Convenience and Necessity. They also  
23 perform audits of utility gas meter shops.

24 Q. What is the purpose of your surrebuttal testimony?

25 A. I am responding to the surrebuttal testimony of Atmos Energy Corporation  
26 ("Atmos" or "Company") witness Mark A. Martin.

27 Q. Have you previously filed testimony in this proceeding?

28 A. No. However, I did directly supervise Dennis Anderson, who previously provided  
29 testimony in this proceeding (ICC Staff Exhibits 2.0 and 5.0). Mr. Anderson  
30 recently retired and is not available to provide a response to Mr. Martin's  
31 surrebuttal testimony. Therefore, I am providing the response to Mr. Martin's  
32 testimony as it relates to issues that Mr. Anderson previously discussed in his  
33 direct and rebuttal testimony.

34 Q. Has Mr. Martin's surrebuttal testimony caused you to reach any conclusions that  
35 differ from those provided previously by Mr. Anderson in his direct testimony (ICC  
36 Staff Exhibit 2.0) or his rebuttal testimony (ICC Staff Exhibit 5.0)?

37 A. No.

38 Q. Did Mr. Martin raise any specific topics that you wish to address at this time?

39 A. Yes. Mr. Martin on page 8 of his surrebuttal testimony indicated that Atmos  
40 could not remove all of its cushion gas from the Egyptian leased storage service  
41 during the 2004-2005 winter season.

42 Q. What had Mr. Anderson previously indicated regarding Atmos' removal of the  
43 cushion gas from the Egyptian storage service?

44 A. Mr. Anderson noted that the Company's planning documents indicate Atmos  
45 failed to recognize that it needed to withdraw its cushion gas allotment from the  
46 Egyptian storage service. (ICC Staff Exhibit 2.0, pp. 22-24) Mr. Anderson then  
47 concluded that Atmos' planning associated with removing the inventory from the  
48 Egyptian storage field was not prudent.

49 Q. What did Mr. Martin's surrebuttal testimony indicate regarding the Company's  
50 ability to withdraw the 100,000 dekatherms ("Dth") of cushion gas and how do  
51 you respond?

52 A. Mr. Martin makes several points at pages 8-9 of his surrebuttal testimony.  
53 Mr. Martin noted that the storage contract with Egyptian required Atmos to  
54 maintain 100,000 DTH of cushion gas. While I agree that there was a  
55 requirement for 100,000 Dth of cushion gas per the April 28, 2004, letter  
56 agreement extension (Company Ex. MM-R-6, page 14 of 15), it was only  
57 required for purposes of triggering the maximum daily firm withdrawal quantities  
58 ("MDFWQ") listed in the Letter Agreement. The actual contractual language was  
59 as follows: "In order to obtain the above MDFWQs listed above, United Cities  
60 (Atmos Energy) is required to maintain a Cushion Gas level of 100,000 DTH in

61 addition to the Maximum Stored Volume of 400,000 DTH.” *Id.* I see no  
62 unconditional obligation to maintain cushion gas in the contract documents  
63 provided by the Company. Rather, it was a conditional obligation that was  
64 required in order for the MDFWQs to apply. There is no contract language  
65 requiring the maintenance of the cushion gas until the end of the withdrawal  
66 season or for any other period.

67 He then indicated that the reason for the cushion gas was that a certain volume  
68 of gas must be in place in a storage field to allow for the daily withdrawal of a  
69 certain quantity of gas. I generally agree with this statement from an operational  
70 perspective. Next, he stated that this operational principle explains why, as  
71 working gas volumes decrease, even with the cushion gas fully in place, the daily  
72 withdrawal limit decreases [under the contract]. I agree that the actual gas in  
73 place in a storage field (including cushion and working gas) would impact the  
74 daily amount that could be withdrawn from an operational perspective, and that  
75 the contract does provide for decreased MDFWQs as the working gas amount  
76 decreases.

77 Mr. Martin then noted that as an operational matter and under any circumstances  
78 the Company would have had to keep some if not all of the cushion gas in place  
79 until the end of the withdrawal season. While the meaning of this statement is  
80 not clear, it is not entirely accurate and potentially misleading. Atmos was not  
81 “operating” the Egyptian storage field, but rather was a lessee of storage  
82 services. Thus, the Company did not have “operational” limitations. Rather, the  
83 Company’s obligations and rights were contractual. Even if one assumes and

84 considers that the cushion gas requirement is supporting the working gas under  
85 the contract, there is no contractual or operational need for the cushion gas in  
86 that context after the working gas has been fully withdrawn. Thus, Mr. Martin  
87 incorrectly focuses on the end of the withdrawal season instead of the withdrawal  
88 of all of the working gas. Mr. Martin has not identified any valid operational or  
89 contractual concerns that would have prevented the Company from withdrawing  
90 its cushion gas during the withdrawal season if it had successfully withdrawn all  
91 of its working gas during the withdrawal season.

92 Finally, Mr. Martin concludes that if the cushion gas were able to be withdrawn it  
93 would have been outside of the withdrawal season and potentially would have  
94 required the incurrence of additional months of storage cost. As previously  
95 explained, Mr. Martin provides no basis for his claim that cushion gas could not  
96 be withdrawn during the withdrawal season. Further, Mr. Martin inaccurately  
97 ascribes storage charges to the cushion gas. It is clear from the letter agreement  
98 extension that the “storage” or capacity charges to which Mr. Martin refers apply  
99 only to the 400,000 of working gas under the agreement: “Capacity Charge  
100 (400,000 DTH \$0.45/12 months \$15,000.00 per month.” Company Ex. MM-R-6,  
101 page 14 of 15.

102 Q. Do you have any other concerns with Mr. Martin’s statements?

103 A. Yes, I disagree with the manner in which he applies that information to the  
104 cushion gas that Atmos had in the leased storage agreement with Egyptian. I  
105 have two reasons for disputing Mr. Martin’s statements.

First, Mr. Martin's interpretations of the leased storage contract would make it physically impossible for Atmos to remove its cushion gas. Staff counsel advises me that such an interpretation violates established legal doctrine. Second, a more reasonable interpretation of the storage agreement would have allowed Atmos to remove all of its gas from the field during the withdrawal season.

Q. What did the contract provide with respect to Atmos' withdrawal of gas from the Egyptian leased storage service?

A. Atmos' contract with Egyptian allowed the storage of a maximum of 400,000 Dth of working gas and required 100,000 Dth of cushion gas in order for the MDFWQs to apply. Egyptian generally allowed Atmos to withdraw gas from the field during the winter season, the period November 1 through March 31, but also allowed withdrawal during the summer period if Seller's operations permit. Company Ex. MM-R-6, p. 4 of 15, §§ 1.1 and 1.2. The contract addendum then noted the following regarding the maximum daily firm withdrawal quantity allowed:

Working Gas Volume	Maximum Daily Firm Withdrawals
Exceeds 200,000 Dth	5,000 Dth/day
100,000 – 200,000 Dth	4,000 Dth/Day
50,000 – 100,000 Dth	3,000 Dth/Day
0 – 50,000 Dth	2,000 Dth/Day

#### **Company's Impossibility Construction**

Q. Do you agree with Mr. Martin's suggestion that under the assumption that Atmos would have had to maintain the cushion gas until the end of the withdrawal

season, Atmos would not have been able to remove all of the cushion gas during the 45-day period following the termination of the contract?

A. Atmos had 100,000 Dth of cushion gas at the Egyptian leased storage service. Assuming the same 2,000 Dth per day withdrawal rate that Egyptian allowed Atmos for its last increment of working gas, it would have taken Atmos a minimum of 50 days to withdraw the gas. If Egyptian's operations would only permit a 2,000 Dth per day withdrawal rate, under Mr. Martin's interpretation of the contract, it was physically impossible for Atmos to remove all of its cushion gas.

Q. If it was likely physically impossible for Atmos to remove all of its cushion gas after the termination of the storage contract, is Mr. Martin's interpretation of the leased storage agreement a reasonable one?

A. No, I do not believe so. Mr. Martin's interpretation would mean that Atmos and Egyptian signed an agreement that made it physically impossible for Egyptian to comply with Atmos' rights to its cushion gas had Atmos attempted to remove it.

It is my understanding, pursuant to advice of counsel, that contracts should not be interpreted to require the performance of an impossible act. Mr. Martin's assumption that Atmos could not remove its cushion gas until after the withdrawal season combined with the assumption that the working gas cannot be withdrawn within 45 days would make it impossible for Atmos to withdraw its working gas and is unreasonable.

151 **Alternative Contractual Assumption**

152 Q. Could Atmos have removed its entire remaining working inventory based on the  
153 restrictions from its contract with Egyptian?

154 A. Yes. Atmos indicated it had 358,000 Dth of working gas in the field at the  
155 beginning of the withdrawal season, November 1, 2004. If Atmos withdrew the  
156 maximum allowed by its contract each day, Atmos would have emptied the  
157 Egyptian field of its working inventory on February 8, 2005. However, Atmos still  
158 had the 100,000 Dth of cushion gas.

159 Q. Assuming Atmos' contract allowed it to withdraw its cushion gas at the same rate  
160 as the last increment of its working inventory, namely 2,000 Dth per day, would  
161 Atmos have had enough time to withdraw its cushion gas during the regular  
162 withdrawal season?

163 A. Yes. Again, assuming Atmos maximized its withdrawals at the 2,000 Dth level  
164 and it started the withdrawals on February 9, 2005, Atmos would have emptied  
165 its cushion gas inventory on March 30, 2005, one day before the withdrawal  
166 season ended for the Egyptian leased storage service, and well before the May  
167 1, 2005, termination date for the contract.

168 Q. If Atmos had removed its entire working gas inventory, would its contract have  
169 allowed Atmos to remove its cushion case at the 2,000 Dth level?

170 A. The 2,000 Dth per day maximum daily firm withdrawal quantity would no longer  
171 have applied, but the contract provides Atmos can "withdraw up to a maximum of

5,000 Dt./Day if Seller's operations permit." Company Ex. MM-R-6, Section 1.2.

Thus, Atmos could have withdrawn up to 5,000 Dth per day if Seller's operations permit. However, after further review of Atmos' responses to Staff data requests ENG 1.66 (that asked for a copy of the leased storage agreement) and ENG 1.97 (that asked for all amendments to that agreement), I determined that Atmos had failed to provide Staff with all of the amendments to the agreement.

In response to ENG 1.97, Atmos provided two "Letter Agreement Extension" from Egyptian dated May 5, 2003, and April 28, 2004. Both of these letters provided a listing of all amendments and Letter Agreements between Atmos and Egyptian. These letters both noted that the original agreement (provided in response to ENG 1.66), was dated May 17, 1993, but that the agreement was amended on April 30, 1995, and had various Letter Agreement signed during the spring 1996, 1999, 2000, 2001, and 2002. Atmos failed to provide the 1995 amendment to the leased storage agreement and did not provide any of the Letter Agreements prior to 2003. It is possible that one of those documents addressed the issue of the cushion gas.

Q. Was Atmos even aware of its rights regarding the cushion gas?

A. No. As was previously discussed in Mr. Anderson's testimony, Atmos' planning for 2004-2005 winter season did not recognize that it had 100,000 Dth of cushion gas to remove from the Egyptian leased storage.

Q. In your opinion, what should Atmos have done once it reached the conclusion to terminate its leased storage service with Egyptian?

194 A. Atmos should have determined whether it was reasonable for it to plan to remove  
195 its entire remaining inventory (both working and cushion gas) from the leased  
196 storage service during the withdrawal season. If Atmos had concerns regarding  
197 its ability to remove all of its remaining inventory, it would have had the ability to  
198 contact any available third parties as well as the storage operator during or prior  
199 to the winter season to either sell or transfer portions of its inventory as well as to  
200 potentially reach a reasonable accommodation with the storage operator  
201 regarding any remaining balance at the field at the end of the contract period.

202 However, due to its poor planning and timely failure to realize its rights to the  
203 100,000 Dth of cushion gas it appears Atmos did not concern itself with the  
204 dispensation of the remaining inventory at the Egyptian leased storage field until  
205 after the contract termination. At such a time, Atmos' options for selling the gas  
206 in question was more limited than if it was attempting to market the gas during  
207 the winter season.

208 Q. Did Mr. Martin raise any other issues that you wish to address at this time?

209 A. Yes. Mr. Martin, on pages 13 and 14 of his surrebuttal testimony, hypothetically  
210 estimated the value that the Company would have received from withdrawing the  
211 155,308 Dth over the course of the winter season versus what the Company  
212 received from Egyptian. Mr. Martin then concluded that withdrawing the 155,308  
213 from storage during the winter season would have cost customers more and thus  
214 Atmos' actions resulted in Illinois ratepayers not suffering any damages.

215 Q. Do you agree with Mr. Martin's statement?

216 A. No. Mr. Martin's claims are, as he acknowledges, pure speculation. He also  
217 presumes the only manner that Atmos had to withdraw the gas was to remove it  
218 ratably during the winter season. However, as I noted above, prior to the start of  
219 the winter season Atmos should have determined if it was reasonable for it to  
220 plan to remove its entire remaining inventory (both working and cushion gas)  
221 from the leased storage service during the withdrawal season. If Atmos had  
222 concerns regarding its ability to remove all of its remaining inventory, it would  
223 have had the ability to contact any available third parties as well as the storage  
224 operator during or prior to the winter season to either sell or transfer portions of  
225 its inventory as well as to potentially reach a reasonable accommodation with the  
226 storage operator regarding any remaining balance at the field at the end of the  
227 contract period.

228 In other words, Atmos cannot go back in time and reinvent the wheel to  
229 determine what it would have done had it prudently planned for the termination of  
230 the Egyptian leased storage service. However, Mr. Martin's attempt to persuade  
231 Staff and the Commission that ratepayers did not suffer any damages based on  
232 his admittedly hypothetical exercise is baseless and should be rejected.

233 Q. Does this conclude your surrebuttal testimony?

234 A. Yes.